IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 422 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

S N THACKER

Versus

BELA N MEHTA

Appearance:

MR NS SHETH for Petitioner

MR TS NANAVATI for Respondent No.1

MR ST MEHTA APP for Respondent No.2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/09/2000

ORAL JUDGEMENT

This Revision Application under section 397 read with section 401 CRPC has been preferred by the complainant in Criminal Case No. 2497/91 against the

order dated 16th September, 1996, passed by the learned Metropolitan Magistrate Court No.9, Ahmedabad, below application dated 15th September, 1995.

It appears that the complainant is the Vice President of 'Jagdamba Cement Ltd." and the accused-the respondent no.1 herein is the Proprietor of M/s Niraj Sales Corporation. M/s Niraj Sales Corporation was appointed as a Distributor of Portland Cement manufactured by 'Jagdamba Cement Ltd.'. The accused used to make payment to the complainant-company by drawing Bills of Exchange. However, some 16 Bills of Exchange for a sum of Rs. 7,13,324/- were not accepted. The parties, therefore, on 17th May, 1991, arrived to a compromise and pursuant to the said compromise, 7 cheques for a total sum of Rs.6,33,895/- were drawn by the accused in favour of the complainant which were payable on various dates commencing from 21st May, 1991. The first of the said cheques for the sum of Rs.6,895/was honoured by the Bank. However, the second cheque in the sum of Rs.1,04,500/- payable on 30th May, 1991, when presented to the Bank was returned with an endorsement "refer to drawer". The third cheque for the like amount, which was payable on 30th June, 1991, was also dishonoured by the Bank, and the complainant was informed that the drawer had issued instructions to stop payment. Feeling aggrieved, the complainant filed the above referred complaint and alleged that the accused had committed offences punishable under sections 409 and 420 IPC. Pending the said prosecution, the complainant instituted Civil Suit No. 2972/94 against the accused and her husband, for recovery of its dues, in the City Civil Court, Ahmedabad. The complainant, therefore, on 15th September, 1995, made an application and prayed that further proceeding in the said prosecution be stayed pending the Civil Suit No. 2972/94. The said application was granted on 16th September, 1996, as aforesaid. The learned Metropolitan Magistrate has ordered to stay the further proceeding in the criminal case pending the Civil Suit No.2972/94. Feeling aggrieved, the complainant has preferred the present Revision. Pending this Revision, by order dated 12th March, 1997, this court has stayed the implementation, enforcement and execution of the impugned order dated 16th September, 1996.

The learned Metropolitan Magistrate has observed that in all such cases where a civil suit is pending in the subject matter, proceeding in the criminal prosecution need not be stayed. However, on the facts of the case, the learned Magistrate held that if the

prosecution is permitted to be proceeded further pending the civil suit, the accused may be put to an embarrassing position and the evidence led in the criminal prosecution may be used by the complainant to fill in the lacunae in the civil suit. Neither of the reasons given by the learned Magistrate is acceptable. There is no reason why the accused should be put to an embarrassing position if she has to face prosecution pending the civil suit. The second reason given by the learned Magistrate proceeds on the footing that there are lacunae in the civil suit, which is unwarranted. I am of the view that the accused has not made out any case how should she be prejudiced if the prosecution is proceeded further pending the civil suit. There is no earthly reason why the prosecution should be stayed pending the civil suit. In my view, the learned Magistrate has grossly erred in ordering stay of the prosecution pending the suit for recovery of the dues by the complainant.

In the result, this Revision Application is allowed. The order dated 16th September, 1996, made by the learned Metropolitan Magistrate, Court No. 9, Ahmedabad, in Criminal Case No. 2497/91 is quashed and set aside. The learned Magistrate shall proceed further with the prosecution in accordance with law, if it has not been completed by now. Rule is made absolute.

(MS R.M.DOSHIT J)

JOSHI